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Attorneys for Plaintiff: JAMES RUTHERFORD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA– EASTERN DIVISION

JAMES RUTHERFORD, an
individual,

Plaintiff,

v.

QAQI BROTHERS, INC., a
California corporation; ABESUD
HALUM, an unmarried man; and
DOES 1-10, inclusive,

Defendants.

Case No. 5:19-cv-00162-MWF-SP
First Amended Complaint For
Damages And Injunctive Relief For:

- 1. VIOLATIONS OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990, 42 U.S.C. §12181 *et*
*seq.***
- 2. VIOLATIONS OF THE UNRUH
CIVIL RIGHTS ACT, CALIFORNIA
CIVIL CODE § 51 *et seq.***

Plaintiff, JAMES RUTHERFORD (“Plaintiff”), complains of Defendants LA
QAQI BROTHERS, INC., a California corporation; ABESUD HALUM, an
unmarried man; and DOES 1-10 (“Defendants”) and alleges as follows:

PARTIES:

1 1. Plaintiff is an adult California resident. Plaintiff is substantially limited
2 in performing one or more major life activities, including but not limited to:
3 walking, standing, ambulating, sitting, in addition to twisting, turning, and grasping
4 objects. As a result of these disabilities, Plaintiff relies upon mobility devices,
5 including at times a wheelchair, to ambulate. With such disabilities, Plaintiff
6 qualifies as a member of a protected class under the Americans with Disabilities Act
7 ("ADA"), 42 U.S.C. §12102(2) and the regulations implementing the ADA set forth
8 at 28 C.F.R. §§ 36.101 et seq. At the time of Plaintiff's visits to Defendant's facility
9 and prior to instituting this action, Plaintiff suffered from a "qualified disability"
10 under the ADA, including those set forth in this paragraph. Plaintiff is also the
11 holder of a Disabled Person Parking Placard.
12

13
14 2. Plaintiff brings this action acting as a "private attorney general" as
15 permitted under the American with Disabilities Act of 1990 ("ADA") to privatize
16 enforcement of the ADA without the American tax payer(s) bearing the financial tax
17 burden for such action.

18 3. Defendant ABESUD HALUM, an unmarried man owned the property
19 located at 49805 Harrison Street, Coachella, California 92236 ("Property") on
20 September 29, 2018.

21 4. Defendant ABESUD HALUM, an unmarried man, owns the Property
22 currently.

23 5. QAQI BROTHERS, INC., a California corporation, owned, operated
24 and controlled the business of LA PLACITA PARTY TIME ("Business") on
25 September 29, 2018.

26 6. QAQI BROTHERS, INC., a California corporation, owns, operates and
27 controls the Business currently.

28 7. Plaintiff does not know the true names of Defendants, their business

1 capacities, their ownership connection to the Property and Business, or their relative
2 responsibilities in causing the access violations herein complained of, and alleges a
3 joint venture and common enterprise by all such Defendants. Plaintiff is informed
4 and believes that each of the Defendants herein, including Does 1 through 10,
5 inclusive, is responsible in some capacity for the events herein alleged, or is a
6 necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend
7 when the true names, capacities, connections, and responsibilities of the Defendants
8 and Does 1 through 10, inclusive, are ascertained.

9 **JURISDICTION AND VENUE**

10 8. This Court has subject matter jurisdiction over this action pursuant
11 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
12 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. ("ADA").

13 9. This court has supplemental jurisdiction over Plaintiff's non-federal
14 claims pursuant to 28 U.S.C. § 1367, because Plaintiff's UCRA claims are so
15 related to Plaintiff's federal ADA claims in that they have the same nucleus of
16 operative facts and arising out of the same transactions, they form part of the same
17 case or controversy under Article III of the United States Constitution.

18 10. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the
19 Property which is the subject of this action is located in this district and because
20 Plaintiff's causes of action arose in this district.

21 **FACTUAL ALLEGATIONS**

22 11. Plaintiff went to the Business on or about September 29, 2018 to make
23 a purchase.

24 12. The Business, including the Property, is a facility open to the public, a
25 place of public accommodation, and a business establishment.

26 13. Parking spaces are some of the facilities, privileges and advantages
27 reserved by Defendants to persons patronizing the Business and Property.

28 14. Unfortunately, although parking spaces were some of the facilities

1 reserved for patrons, there were barriers for persons with disabilities that cause the
2 named facilities to fail as to compliance with the Americans with Disability Act
3 Accessibility Guidelines (“ADAAG”) on or around September 29, 2018, or at any
4 time thereafter up to and including, the date of the filing of this First Amended
5 Complaint.

6 15. Instead of having architectural barrier free facilities for patrons with
7 disabilities, Plaintiff experienced the following at the Business and Property: there is
8 no ADASAD compliant accessible or van accessible parking signage in violation of
9 Section 502.6; the curb ramp at the accessible parking spaces serving the main
10 entrance projects into the access aisle in violation of Section 406.5 which requires
11 that curb ramps and the flared sides of curb ramps shall be located so that they do
12 not project into vehicular traffic lanes, parking spaces, or parking access aisles; the
13 slope of the curb ramp flares at the curb ramp connecting the accessible parking
14 spaces to the accessible route exceeds 10% in violation of Section 406.3; and,
15 parking spaces and access aisles serving them shall comply with 302. Access aisles
16 shall be at the same level as the parking spaces they serve. Changes in level are not
17 permitted.

18 16. Subject to the reservation of rights to assert further violations of law
19 after a site inspection found *infra*, Plaintiff asserts there are additional ADA
20 violations which affect him personally.

21 17. Plaintiff is informed and believes and thereon alleges that, currently,
22 there are no compliant, accessible Business facilities designed, reserved and
23 available to persons with disabilities at the Business in addition to that alleged *supra*.

24 18. Plaintiff is informed and believes and thereon alleges that Defendants
25 had no policy or plan in place to make sure that the parking spaces were compliant
26 for persons with disabilities and remained compliant prior to September 29, 2018.

27 19. Plaintiff is informed and believes and thereon alleges Defendants have
28 no policy or plan in place to make sure that the complaints of violations alleged

1 above are available to persons with disabilities and remain compliant currently.

2 20. Plaintiff personally encountered the above alleged barriers when
3 attempting to access the Business and Property. These inaccessible conditions
4 denied the Plaintiff full and equal access and caused him difficulty, humiliation,
5 frustration and upset.

6 21. As an individual with a mobility disability who at times is dependent
7 upon a mobility device, Plaintiff has a keen interest in whether public
8 accommodations have architectural barriers that impede full accessibility to those
9 accommodations by individuals with mobility impairments.

10 22. Plaintiff is being deterred from patronizing the Business and its
11 accommodations on particular occasions, but intends to return to the Business for the
12 dual purpose of availing himself of the goods and services offered to the public and
13 to ensure that the Business ceases evading its responsibilities under federal and state
14 law.

15 23. As a result of his difficulty, humiliation, and frustration because of the
16 inaccessible condition of the facilities of the Business, Plaintiff did not fully access
17 the Business or Property. However, Plaintiff would like to return to the location
18 given its close proximity to an area he frequents from time to time.

19 24. The defendants have failed to maintain in working and useable
20 conditions those features required to provide ready access to persons with
21 disabilities.

22 25. The violations identified above are easily removed without much
23 difficulty or expense. They are the types of barriers identified by the Department of
24 Justice as presumably readily achievable to remove and, in fact, these barriers are
25 readily achievable to remove. Moreover, there are numerous alternative
26 accommodations that could be made to provide a greater level of access if complete
27 removal were not achievable.

28 26. Given the obvious and blatant violation alleged hereinabove, Plaintiff

1 alleges, on information and belief, that there are other violations and barriers in the
 2 site that relate to his disabilities. Plaintiff will amend the First Amended Complaint,
 3 to provide proper notice regarding the scope of this lawsuit, once he conducts a site
 4 inspection. However, please be on notice that Plaintiff seeks to have all barriers
 5 related to their disabilities remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir.
 6 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to
 7 have all barriers that relate to his disability removed regardless of whether he
 8 personally encountered them).

9 27. Given the obvious and blatant violation alleged hereinabove, Plaintiff
 10 alleges, on information and belief, that the failure to remove these barriers was
 11 intentional because: (1) these particular barriers are intuitive and obvious; (2) the
 12 defendants exercised control and dominion over the conditions at this location, and
 13 therefore, (3) the lack of accessible facilities was not an accident because had the
 14 defendants intended any other configuration, they had the means and ability to make
 15 the change.

16 28. Without injunctive relief, plaintiff will continue to be unable to fully
 17 access Defendants' facilities in violation of Plaintiff's rights under the ADA.

18 **FIRST CAUSE OF ACTION**

19 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990,**

20 **42 U.S.C. § 12181 et seq.**

21 29. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
 22 above and each and every other paragraph in this First Amended Complaint
 23 necessary or helpful to state this cause of action as though fully set forth herein.

24 30. Under the ADA, it is an act of discrimination to fail to ensure that the
 25 privileges, advantages, accommodations, facilities, goods, and services of any place
 26 of public accommodation are offered on a full and equal basis by anyone who owns,
 27 leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a).

28 Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix "D".
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

31. Any business that provides parking spaces must provide accessible parking spaces. 1991 Standards § 4.1.2(5). 2010 Standards § 208. Under the 1991 Standards, parking spaces and access aisles must be level with surface slopes not exceeding 1:50 (2.0%) in all directions. 1991 Standards § 4.6.2. Under the 2010 Standards, access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted. 2010 Standards § 502.4. "Access aisles are required to be nearly level in all directions to provide a surface for wheelchair transfer to and from vehicles." 2010 Standards § 502.4 Advisory. Specifically, built up curb ramps are not permitted to project into access aisles and parking spaces. Id. No more than a 1:48 slope is permitted. Standards § 502.4.

32. Here, the failure to ensure that accessible facilities were available and ready to be used by Plaintiff is a violation of law.

33. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

34. Given its location and options, Plaintiff will continue to desire to patronize the Business but he has been and will continue to be discriminated against due to lack of accessible facilities and, therefore, seek injunctive relief to remove the barriers.

SECOND CAUSE OF ACTION

VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL

CODE § 51 *et seq.*

35. Plaintiff re-alleges and incorporates by reference all paragraphs alleged above and each and every other paragraph in this First Amended Complaint necessary or helpful to state this cause of action as though fully set forth herein.

36. California Civil Code § 51 *et seq.* guarantees equal access for people with disabilities to the accommodations, advantages, facilities, privileges, and services of all business establishments of any kind whatsoever. Defendants are systematically violating the UCRA, Civil Code § 51 *et seq.*

37. Because Defendants violate Plaintiff's rights under the ADA, they also violated the Unruh Civil Rights Act and are liable for damages. (Civ. Code § 51(f), 52(a).) These violations are ongoing.

38. Defendants' actions constitute intentional discrimination against Plaintiff on the basis of their individual disabilities, in violation of the UCRA, Civil Code § 51 *et seq.* Plaintiff is informed and believes and thereon alleges Defendants have been previously put on actual notice that its premises are inaccessible to Plaintiff as above alleged. Despite this knowledge, Defendants maintain the Property and Business in an inaccessible form.

PRAYER

WHEREFORE, Plaintiff prays that this court award damages provide relief as follows:

1. A preliminary and permanent injunction enjoining Defendants from further violations of the ADA, 42 U.S.C. § 12181 *et seq.*, and UCRA, Civil Code § 51 *et seq.* with respect to its operation of the Business and Subject Property; **Note: Plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disable Persons Act at all.**

2. An award of actual damages and statutory damages of not less than \$4,000 per violation pursuant to § 52(a) of the California Civil Code and \$4,000 for each time he visits an establishment that contains architectural barriers that deny the Plaintiff of full and equal enjoyment of the premises (*Feezor v. Del Taco, Inc.* (2005) 431 F.Supp.2d 1088, 1091.)

3. An additional award of \$4,000.00 as deterrence damages for each violation pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d 1096; 2016 U.S. Dist. LEXIS 150740 (USDC Cal, E.D. 2016);

4. For reasonable attorneys' fees, litigation expenses, and costs of suit, pursuant to 42 U.S.C. § 12205; California Civil Code § 52;

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully request a trial by jury on all appropriate issues raised in this First Amended Complaint.

Dated: March 20, 2019

MANNING LAW, APC

By: /s/ Joseph R. Manning Jr., Esq.

Joseph R. Manning Jr., Esq.

Michael J. Manning, Esq.

Craig G. Côté, Esq.

Osman M. Taher, Esq.

Attorneys for Plaintiff

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**PROOF OF SERVICE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and not a party to the cause. My business address is 4667 MacArthur Blvd., Suite 150, Newport Beach, CA 92660.

On 3/20/19 I served the true copies of the foregoing document described as:

First Amended Complaint For Damages And Injunctive Relief

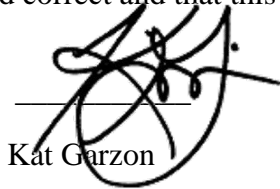
on the interested parties in this action, addressed as follows, **Served by Mail via Postal Service:**

ABESUD HALUM, an unmarried man
49849 Harrison St.
Coachella, CA 92236

☒ By United States Postal Service: The documents were mailed as set forth above by U.S. Mail and placed in sealed, addressed envelopes on the above date and deposited into a U.S. Postal Service Mail box on the date set forth above, with postage thereon fully prepaid at Newport Beach, California.

☐ BY Electronic Mail. I caused each such document to be transmitted electronically to the parties at the e-mail address indicated. To the best of my knowledge, the transmission was reported as complete and no error was reported that it was not completed.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this affidavit was executed on March 20, 2019.



Kat Garzon